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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 In re: TERRORIST ATTACKS ON  
4 SEPTEMBER 11, 2001

03 MDL 1570 (GBD)

5 HAVLISH, *et al.*,

03 Civ. 9848 (GBD)

6 Plaintiffs,

7 v.

8 BIN LADEN, *et al.*,

9 Defendants.

10 JOHN DOES 1 through 7,

20 Misc. 740 (GBD)

11 Plaintiffs,

12 v.

13 THE TALIBAN, *et al.*,

14 Defendants.

15 Remote Conference

16 New York, N.Y.

17 February 22, 2022

18 9:30 a.m.

19 Before:

20 HON. SARAH NETBURN,

21 Magistrate Judge

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Also Present:  
Joseph Borson, Department of Justice - Civil Division

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(Case called)

THE COURT: Good morning, everybody. This is Judge Netburn. I think we are ready to begin.

This case is alternatively captioned In Re: Terrorists Attacks on September 11, 03 MD 1570; in addition, today's conference relates to Havlish v. bin Laden, 03 Civ. 9848; and John Does 1 through 7 v. the Taliban, 20 Misc. 740.

I'm going to identify the parties that I believe are here. I know we have a number of lawyers on the line. I'm going to ask that only the lawyers who anticipate speaking identify themselves when their case is called so we can have those appearances made. If somebody who does not initially state an appearance wishes to be heard later, we can have you state your appearance at that time. But for these purposes, I think I will just hear from the people who intend to speak.

So I will begin with a representative for the plaintiffs for the John Does 1 through 7 parties.

MR THORNTON: Good morning, your Honor. John Thornton on behalf of John Does 1 through 7, and my partner and associate are on the call also.

THE COURT: Thank you.

And on behalf of Havlish plaintiffs.

MR. WOLOSKY: Good morning, your Honor. This is Lee Wolosky, from Jenner & Block, for the Havlish plaintiffs. My partner Doug Mitchell is on the line, as well.

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1 THE COURT: Thank you.

2 Let me hear, who do we have on behalf of the United  
3 States?

4 MS. VARGAS: Good morning, your Honor. This is  
5 Jeanette Vargas from the U.S. Attorney's office on behalf of  
6 the United States. Also on the line is Joseph Borson, from the  
7 United States Department of Justice.

8 THE COURT: Thank you.

9 And on behalf of the Federal Insurance plaintiffs?

10 MR. CARTER: Good morning, your Honor. Sean Carter  
11 from Cozen O'Connor.

12 THE COURT: Thank you.

13 And on behalf of Burnett plaintiffs?

14 MS. FLOWERS: Good morning, your Honor. It's Jodi  
15 Flowers on behalf of the Burnett plaintiffs, and also with me  
16 is my partner Don Migliori.

17 THE COURT: Thank you.

18 On behalf of O'Neill plaintiffs?

19 MR. GOLDMAN: Good morning, your Honor. This is Jerry  
20 Goldman on behalf of the O'Neill plaintiffs. I have my partner  
21 Bruce Strong on the line, and I have others listening. Thank  
22 you.

23 THE COURT: Thank you.

24 And on behalf of Ashton plaintiffs?

25 MS. BENETT: Good morning, your Honor. This is Megan

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1 Benett for the Ashton plaintiffs. We have Michael Tremonte, of  
2 Sher Tremonte, who will be putting in a notice of appearance  
3 this morning. He and I will be the two people who will be  
4 speaking on behalf of Ashton.

5 THE COURT: Thank you.

6 Any other plaintiff groups that I haven't identified  
7 who intend to speak this morning? All right.

8 And I think we may have some representatives of  
9 defendants, though I don't know that they are going to be  
10 participating.

11 Do we have a lawyer on the phone on behalf of the  
12 Kingdom of Saudi Arabia?

13 MR. RAPAWY: Yes, your Honor. This is Gregory Rapawy  
14 of Kellogg Hansen. I do not anticipate speaking this morning,  
15 but I am on the line.

16 THE COURT: Okay. Thank you. And on behalf of the  
17 Republic of the Sudan?

18 MS. ERB: Good morning, your Honor. This is Nicole  
19 Erb. I'm joined by Chris Curran and Claire DeLelle. And  
20 likewise, we do not intend to speak this morning.

21 THE COURT: Thank you. And any other defendant groups  
22 who are on the line who would like to state their appearance?

23 Okay. Hearing none, I will assume that is our set of  
24 lawyers.

25 I understand we also have a line open for the public

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1 and the press. I will remind everybody who is listening in  
2 that this is a court proceeding. Any recording or  
3 rebroadcasting of today's proceeding is strictly prohibited.

4 We have a court reporter on the line. To facilitate  
5 that person's job, we want to make sure that we are not  
6 speaking over one another – everybody will have an opportunity  
7 to be heard – that people are speaking slowly, and that you  
8 state your name each and every time you speak so that the court  
9 reporter knows to whom to attribute all statements.

10 Okay. I believe we have two primary matters on our  
11 agenda today.

12 First, we have the writs of execution against the  
13 assets held at the Federal Reserve Bank of New York. The  
14 government has said that these writs need to be addressed to  
15 facilitate the implementation of the President's foreign  
16 policy, so we will begin by talking about whether there is an  
17 efficient way to achieve that goal without having to resolve  
18 all of the questions surrounding the entitlements to those  
19 funds.

20 And second, there are currently stays on the writs of  
21 execution targeting the Afghanistan bank funds, so we will  
22 address that and, more broadly, how we want to move the  
23 litigation on these funds forward.

24 So let me begin with the first item, and probably I  
25 will address my comments in the first instance to Ms. Vargas.

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1           So according to the government's statement of  
2           interest, the Havlish and Doe writs are currently standing in  
3           the way of implementing the division of the DAB funds that are  
4           currently held at the Federal Reserve, and the government has  
5           requested that these issues be dealt with in advance of all  
6           other issues. This will allow the executive branch to carry  
7           out its foreign policy providence and, as it represents to us,  
8           apparently the funds are needed to address a major Afghanistan  
9           humanitarian crisis.

10           And so I would like to begin the crisis about thinking  
11           about the best way that we can get out of the government's way  
12           so that it can execute its foreign policy.

13           My understanding is that the Havlish and Doe writs may  
14           be satisfied with far less than the \$7 billion that are  
15           currently being held in the Federal Reserve. So given this, is  
16           it the government's view that modifying the Havlish and Doe  
17           writs to attach a smaller sum, which I understand would be  
18           likely something less than the \$3.5 billion, would permit the  
19           transactions that are contemplated by President Biden's  
20           February 11 executive order and the OFAC license that he also  
21           issued on that same day?

22           Ms. Vargas, let me begin with you.

23           MS. VARGAS: Yes, your Honor. Thank you.

24           The government does believe that that would be  
25           satisfactory. What we are looking for is an order entered



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1 expeditiously clarifying that the Doe and Havlish writs are  
2 null and void and have no effect as to the 3.5 billion in  
3 licensed assets but that those writs can remain in effect to  
4 the extent permissible by law as to all other assets pending  
5 further order of this Court.

6 As your Honor has observed, the Doe writ is for  
7 approximately 138 million. The Havlish writ is nominally in  
8 the amount of approximately \$6.8 billion; but, as set forth in  
9 our statement of interest, TRIA permits attachment only to the  
10 extent of compensatory damages. The Havlish plaintiffs do not  
11 disagree with this position; and, therefore, the unlicensed  
12 funds that will remain in the account of the Federal Reserve  
13 Bank of New York after the 3.5 billion in licensed funds are  
14 removed will be more than sufficient to satisfy both the Doe  
15 and Havlish writs combined when the Havlish writ is  
16 appropriately modified to reflect compensatory damages only.

17 And alternatively, as set forth at length in the  
18 government's statement of interest, the licensed funds are not  
19 subject to attachment under TRIA as a matter of law as the  
20 licensed funds are not blocked assets within the meaning of the  
21 statute.

22 But for our purposes, what we need is an order simply  
23 stating that the writs are null and void and have no effect as  
24 to the 3.5 in licensed assets. And we understand that the Doe  
25 and Havlish plaintiffs do not object to this requested relief.

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1 THE COURT: Terrific. That was going to be my next  
2 question.

3 And so that would be, just so I am clear, the proposal  
4 is simply an order that would effect those writs. They don't  
5 need to file new writs of execution, is that correct?

6 MS. VARGAS: That's correct from the government's  
7 perspective. What we require, under paragraph 5 of our  
8 license, the license states that the Federal Reserve Bank must  
9 comply with any applicable orders, rulings, writs, or other  
10 judicial process of the United States federal courts, which is  
11 why this is at issue. Therefore, we need an order that will  
12 allow the Fed to have confidence that these writs do not  
13 prevent any transfer of the licensed funds.

14 THE COURT: Okay. And if we issue that order  
15 expeditiously, is that all that the government needs at this  
16 time for it to carry out its foreign policy agenda?

17 MS. VARGAS: At this present time, that's correct,  
18 your Honor.

19 THE COURT: Okay. Thank you.

20 Let me turn now to John Thornton on behalf of the Doe  
21 plaintiffs and then to Mr. Wolosky on behalf of the Havlish  
22 plaintiffs to confirm that both parties are in agreement that  
23 the best way to proceed, and on your consent, is to issue an  
24 order indicating that the licensed funds are unavailable for  
25 the attachment of the writ.

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1 Let me turn to Mr. Thornton first.

2 MR THORNTON: Thank you, your Honor.

3 From the way that was described, we would not object  
4 to that approach, you know, obviously with the understanding  
5 that our writ is not null and void; it's just that our writ  
6 doesn't reach those \$3 1/2 billion that are licensed.

7 THE COURT: Thank you.

8 Mr. Wolosky?

9 MR. WOLOSKY: Your Honor, we have no objection; but,  
10 similarly, we believe that, as a matter of law, the Havlish  
11 writ that was served in August or September currently does not  
12 encompass the funds that the government wishes to move as a  
13 result of the actions, both the blocking and the licensing  
14 actions that the executive branch took on February 11. So  
15 certainly, to the extent that the Court wishes to enter an  
16 order making that clear with respect to the 3.5, the Havlish  
17 plaintiffs have no objection.

18 Your Honor has authority under New York CPLR Section  
19 5240 to modify writs, if your Honor wishes to, to provide  
20 assurance to the government by means of clarification with  
21 respect to the funds that it wishes to move.

22 Again, we certainly don't think that an order -- we  
23 would not agree that an order nullifying a writ would be  
24 appropriate; but certainly modifying the writ, if the Court and  
25 the government thinks it is necessary to make clear that the

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1 writ -- the Havlish writ does not encumber the 3.5 billion that  
2 the government wishes to move and which has now been licensed,  
3 we have no objection to that.

4 THE COURT: Okay. Thank you.

5 Does any other party wish to be heard exclusively on  
6 the question about how to act with respect to President Biden's  
7 executive order and the OFAC license in connection with the  
8 funds in the Federal Reserve?

9 Okay. I don't know that this has ever happened, but  
10 hearing nobody from any of the plaintiffs' executive  
11 committees, I think we can move forward on that issue.

12 So I'm going to direct Ms. Vargas, if you can work  
13 with the lawyers for the Doe and Havlish plaintiffs on  
14 preparing an order for my signature, obviously the sooner you  
15 get it to me, the sooner I will sign it and the funds will be  
16 made available to the executive. So I will just be on the  
17 lookout for that draft order. If you can get it to me as soon  
18 as possible, I will sign it.

19 MS. VARGAS: Thank you, your Honor. We will work on  
20 it and get it to you very shortly.

21 MS. BENETT: Your Honor, this is Megan Bennett on  
22 behalf of the Ashton plaintiffs.

23 I just wanted to make sure I understood that, at least  
24 on our behalf, there is no objection, of course, to rendering  
25 the Havlish and Doe writs null and void with respect to the

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1 licensed assets, and we would of course agree that that should  
2 move expeditiously.

3 To the extent that an order would address anything  
4 concerning those writs and the modification, for example, of  
5 the Havlish writ, I think that that would be something we would  
6 want to be heard on. But, again, I don't think that's  
7 necessary in the context of moving forward with rendering the  
8 writs null and void with respect to the licensed assets.

9 THE COURT: I'm not sure exactly what it is you are  
10 referring to, Ms. Bennett. What precisely do you wish to be  
11 heard on with respect to the Havlish writ?

12 MS. BENETT: Well, to the --

13 THE COURT: I know you want to be heard on the issue  
14 of stay, but on issue of the writ itself.

15 MS. BENETT: As we raised in the letter to the Court  
16 that we submitted, we don't necessarily agree with  
17 Mr. Wolosky's position that the Court has the authority to  
18 modify the writ under Article 52 of the New York CPLR. That's  
19 one of the issues that we think would warrant some further  
20 briefing and that we believe we have an interest in presenting  
21 our position on that to the Court.

22 MR. TREMONTE: Your Honor, this is Michael Tremonte,  
23 on behalf also of the Ashton plaintiffs.

24 I just wonder if it is helpful to formulate this  
25 precisely to see if in fact we are all in agreement.

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1           It sounds as though the government and everyone else  
2 shares the view that, with respect to the licensed funds, that  
3 is to say, the portion of the DAB assets authorized by the OFAC  
4 license to be transferred for the benefit of the Afghan people,  
5 it sounds like we all agree that as a matter of law those  
6 funds, the licensed funds, are not subject to attachment in  
7 this litigation. And I think if that alone is the basis for  
8 the Court's order directing the release of those funds so that  
9 the administration can fulfill its foreign policy objectives, I  
10 don't think there is any controversy here at all as to this  
11 piece.

12           THE COURT: Okay. I really hope there is no hold-up  
13 here. So I am going to direct that Ms. Vargas communicate with  
14 the Havlish and Doe plaintiffs, as they are the only ones who  
15 currently have writs attached to those funds as far as I am  
16 aware, and to submit something on the -- a proposed order on  
17 the MDL docket as soon as you can. I will wait 24 hours to  
18 sign that order. If anybody wishes to be heard with respect to  
19 that order, you can file it within that 24-hour window. But I  
20 will sign that order, assuming it is otherwise appropriate,  
21 within 24 hours after the 24-hour window expires. And  
22 certainly to the extent you can let me know before 24 hours  
23 that there is no objection, we will go ahead and get that up.

24           All right. Thank you. Let's move forward on the next  
25 phase, which is in connection with these writs of execution.

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1 They have been stayed. Both the Havlish and the Doe plaintiffs  
2 have requested that we lift those stays. And so the next  
3 question is how we should proceed with respect to those writs  
4 and briefing on the issue with respect to entitlement to any of  
5 the DAB funds.

6 So let me first hear from the Havlish plaintiffs on  
7 how they think the most efficient way is for us to proceed at  
8 this point.

9 MR. WOLOSKY: Thank you, your Honor. This is Lee  
10 Wolosky for the Havlish plaintiffs.

11 The position of the Havlish creditors is that the  
12 Court should lift the stay of enforcement in order to allow  
13 these proceedings to move forward in accordance with normally  
14 applicable procedures under New York law which assure that no  
15 MDL party will be prejudiced.

16 This matter is certainly unique in many respects, but  
17 what we are asking for is not. We are asking the Court to move  
18 forward with the next procedural step that parties holding  
19 writs of execution must take in order to keep enforcement of  
20 those writs.

21 The stay was put in place to permit the government to  
22 file its statement of interest. That has now happened. The  
23 government does not oppose the lifting of the stay consistent  
24 with the views expressed in its statement of interest. And  
25 once the stay is lifted, all parties will have, as the

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1 White House said in its February 11 statement when it blocked  
2 the funds at issue, "a full opportunity to have their claims  
3 heard in U.S. courts."

4 Other MDL parties oppose lifting the stay but, as my  
5 partner Doug Mitchell will explain in a moment, lifting the  
6 stay will afford them a full opportunity to have their claims  
7 heard by the Court. Significantly, the Havlish creditors have  
8 no objection to their participation in the briefing following  
9 the filing of the Havlish and Doe's motions for turnover.

10 I'm going to turn it over to my partner Doug Mitchell,  
11 who will address with greater specificity the procedures that  
12 we envision will govern in the event that the Court lifts the  
13 stay.

14 THE COURT: Thank you.

15 MR. MITCHELL: Your Honor, this is Doug Mitchell, and  
16 I will be brief.

17 But as Mr. Wolosky noted, under Federal Rule of Civil  
18 Procedure 69(a), New York law applies to the resolution of and  
19 the litigation of issues relating to judgment enforcement  
20 proceedings subject to any application of TRIA in the context  
21 of those judgment enforcement proceedings.

22 If we look at CPLR 5225 and/or 5227, both of those  
23 enforcement procedures contemplate filing a special proceeding  
24 to litigate claims relating to assets of a debtor that are held  
25 in the hands of a garnishee such as the New York Federal



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1 Reserve Bank. Those provisions also specifically reference  
2 another section, 5239, which allows claims by adverse parties  
3 to raise their claims and to litigate their interest with  
4 respect to those assets; and then it also provides the Court  
5 with a framework for resolving those differing competing claims  
6 and making final determinations about the disposition of the  
7 assets that are subject to the writs filed by the Havlish  
8 plaintiffs and the Doe plaintiffs. And, consequently, your  
9 Honor, we think that the New York law that has been in place  
10 for quite some time governing the litigation of issues involved  
11 with enforcing judgments against assets held by garnishees will  
12 provide the Court and the parties with a full and fair  
13 opportunity to be heard on any and all issues that will be  
14 involved in this enforcement proceeding. We also think that  
15 the methodology to get that opportunity or to start that  
16 process requires lifting the stay so that that process can be  
17 implemented and the parties can move forward within that  
18 framework.

19 THE COURT: How quickly after we lift the stay would  
20 you anticipate filing your application?

21 MR. WOLOSKY: Your Honor, Lee Wolosky again.

22 We would propose filing our motion for turnover two  
23 weeks from today, March 8.

24 THE COURT: Okay. And then just so I understand your  
25 position, once you file your motion for turnover, interested

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1 parties would be permitted to then participate either as an  
2 interpleader or otherwise, is that correct?

3 MR. WOLOSKY: Lee Wolosky again, your Honor.

4 That is correct. We do not oppose any MDL parties  
5 participating in the briefing. And obviously other motion  
6 practice that is underway with respect to the finalization of  
7 money damage awards would proceed unobstructed and  
8 concurrently.

9 THE COURT: Thank you.

10 Mr. Thornton, on behalf of the John Doe plaintiffs,  
11 anything that you want to add to that proposal or are you in  
12 agreement with what the Havlish creditors are proposing?

13 MR THORNTON: Your Honor, we are basically in  
14 agreement with what they are proposing and the schedule. We  
15 just see this as a situation, a very straightforward situation,  
16 where we have a writ that I believe we have had since September  
17 and that the stay was initiated in order for the government to  
18 give its statement of interest. It's done that. The  
19 government doesn't oppose the matter moving forward, so we  
20 think the matter should move forward. We are fine with March  
21 8. We think we can file our turnover motion by March 8.

22 As far as the booty thing and who gets to say anything  
23 about the briefing, our feeling is that there are only two  
24 parties in this matter that have valid writs of execution  
25 against the funds at issue and that those two parties – us and

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1 the Havlish creditors and writ holders – have some common  
2 questions of fact that we will both address in our motions, and  
3 that, in the normal course, people that don't share those  
4 commonalities don't have -- you know, aren't allowed to come in  
5 and brief concerning them.

6 We are concerned about, and we filed a motion, as you  
7 know, a letter motion, concerning the fact that we are in the  
8 MDL with the rest of the September 11th plaintiffs who don't  
9 have judgments, even, against the same parties, let alone writs  
10 of execution, and we are concerned that the process not get  
11 slowed down from what the normal process would be under the  
12 prosecution of a writ under New York law.

13 THE COURT: Thank you. Understood.

14 All right. Let me turn to the members of the  
15 plaintiffs' executive committee. I believe that there are  
16 lawyers who wish to be heard.

17 Why don't I just begin, Mr. Carter, do you wish to be  
18 heard?

19 MR. CARTER: Yes, your Honor. Thank you.

20 From my perspective, as one of the long-serving chairs  
21 of the plaintiffs' executive committee, I think I come at this  
22 with an eye towards the overarching case management issues that  
23 some of the other counsel may not be as sensitized to, and also  
24 mindful of the other issues that are going to require the  
25 Court's attention in the very near term, including our motion

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1 under Rule 54(b) based on the decisions in *Kaplan* and  
2 *Honickman*.

3 It seems to us that one of the obvious challenges in  
4 this moment is that recent developments have prompted numerous  
5 plaintiffs' groups to file applications seeking, in effect, to  
6 be placed on equal footing with the Havlish and Doe plaintiffs  
7 in this context. And part of the difficulty with that is that  
8 the procedural status and degree of advancement of those  
9 plaintiffs' claims against the Taliban varies quite  
10 significantly.

11 On the one hand of the spectrum, we have the Havlish  
12 and Doe plaintiffs who have secured monetary judgments again  
13 the Taliban and served writs of execution. You then have  
14 certain plaintiffs in the federal action who secured liability  
15 judgments against the Taliban in 2006 and filed proofs to  
16 obtain a monetary award as to the Taliban in 2007, which the  
17 Court has addressed in other contexts, but not as to the  
18 Taliban. You have other plaintiffs who likewise received  
19 liability --

20 THE COURT: Mr. Carter? Sorry.

21 MR. CARTER: Yes.

22 THE COURT: Mr. Carter, can you speak a little more  
23 slowly?

24 MR. CARTER: Yes, sure.

25 You then have other plaintiffs who likewise received

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1 liability default judgments in 2006 and have moved more  
2 recently in the past few months for monetary awards as to the  
3 Taliban. There are then additional plaintiffs who were added  
4 to complaints in which the Taliban was named as a defendant,  
5 but not until after the 2006 liability defaults were entered,  
6 who are now seeking both liability and monetary judgments. And  
7 beyond that, there are plaintiffs who are, in one way or  
8 another, taking action now to validate claims against the  
9 Taliban in the first instance.

10 And so as a practical matter, it seems to me that it  
11 will be very difficult for the Court to harmonize the  
12 procedural status of the claims of all of those different  
13 groups. And it also seems clear that plaintiffs who took  
14 earlier action will have good reason to argue that they would  
15 be prejudiced by having their rights deferred while less  
16 advanced claims catch up.

17 And even beyond that, any attempt to achieve this sort  
18 of equal footing result would require the Court to undertake  
19 what appears to be a very expansive scope of work in a very  
20 short period of time, and I think some of the comments you  
21 heard from other counsel about the set of activities that will  
22 be set in motion by the commencement of the turnover proceeding  
23 underscore that.

24 So at least from my perspective, all of those  
25 considerations call out for a concerted effort on the part of

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1 the plaintiffs who have presented applications to the Court on  
2 this front to sit down in earnest to try to work out a  
3 framework that would obviate the need for the Court to address  
4 competing priority and allocation arguments, and that would in  
5 turn obviate the need for the Court to decide all of the  
6 pending judgment applications under whatever approach the Court  
7 might ultimately find most appropriate.

8 And again, an agreement on that front would then allow  
9 the parties and the Court to focus the remaining briefing on  
10 the scope and application of Section 201 of the Terrorism Risk  
11 Insurance Act, and that can be quite focused if the plaintiffs  
12 are all on the same page. It does seem to me that those  
13 conversations are likely to be more fruitful if they are  
14 occurring before briefing begins in earnest on the turnover  
15 proceedings. That could happen very soon. But it does strike  
16 us that it would be beneficial for the Court to urge the  
17 parties to sit down with one another and try and work out some  
18 agreements on this framework.

19 THE COURT: Thank you, Mr. Carter. I agree with a lot  
20 of what you said. I also don't see how, even if the Court were  
21 able to undertake the Herculean task of addressing all of the  
22 pending or anticipated motions with respect to claims against  
23 the Taliban, those claims would ever even be on equal footing  
24 with the Doe and Havlish plaintiffs, given that they have  
25 secured judgments and filed their writs. It would seem to me,

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1 under firm circuit law, that they would be a priority for any  
2 claim.

3 And so that to me is yet another reason why having a  
4 fire drill with respect to the outstanding and anticipated  
5 motions seems to be time not well spent. So I appreciate your  
6 suggestion that coming up with a way to focus the Court's  
7 attention on the issues that are most important and would  
8 address the parties' realistic needs is the best way to  
9 proceed. So thank you for those comments.

10 MR. CARTER: Certainly, your Honor.

11 THE COURT: I know Ms. Benett said she wanted to be  
12 heard, so I will turn to Ms. Benett or Mr. Tremonte.

13 MS. BENETT: Thank you, your Honor. I think I will  
14 defer to Mr. Tremonte on this.

15 MR. TREMONTE: Thank you, your Honor. It is Michael  
16 Tremonte.

17 I think we are largely in agreement with Mr. Carter's  
18 suggestion, I think on the understanding that the stay would  
19 remain in place while the parties are conferring towards the  
20 goal that Mr. Carter articulated. We do believe that the stay  
21 should remain in place at this juncture. The touchstone, of  
22 course, is that we want all the 9/11 families to be treated  
23 fairly and so, consistent with that important goal, any  
24 proposal, you know, would need to be, at least in the short  
25 term, against the backdrop of the stay remaining in place.

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1           If the Court is inclined to instruct the parties to  
2 meet and confer, as Mr. Carter suggested, I think we would  
3 likely be in agreement with that. Alternatively, another  
4 procedure that would be consistent with ensuring fairness to  
5 all of the 9/11 families would be to address the pending  
6 motions for final damages judgments, to schedule briefing on  
7 the threshold questions of attachability of the remaining  
8 blocked assets under TRIA, and we think at the same time to  
9 schedule briefing on the question of the appropriate proceeding  
10 for enforcing the judgments. And that, of course, is a  
11 potentially very consequential set of issues as to enforcement  
12 and, again, it is one with respect to which the interested  
13 parties, the full range of interested parties should be heard,  
14 and there is clear authority for that, in our view, under the  
15 CPLR.

16           THE COURT: Can I interrupt you for a second?

17           MR. TREMONTE: Yes.

18           THE COURT: What is the authority? Your clients, as I  
19 understand it, have no judgments against these entities for  
20 which you could attach to the funds. So what standing does  
21 your client have, do you have to challenge the procedural  
22 mechanism by which the Havlish and Doe plaintiffs seek to  
23 proceed on their execution? I understand that you might have a  
24 right to, whether it is sort of interplead or otherwise join  
25 the turnover proceeding, but why do you have a say on how they



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1 proceed as a procedural matter?

2 MR. TREMONTE: Yes, your Honor.

3 So in addition to the interpleader rights, which we  
4 agree that we clearly have, we think that we are also  
5 interested persons within the meaning of CPLR 5240, and that is  
6 a provision that affords the Court very broad powers upon the  
7 motion of an interested party or, frankly, on the Court's own  
8 initiative within the clear language of the provision to  
9 modify, limit, and condition the use of any enforcement  
10 procedure. And so we think at a minimum that provision affords  
11 us standing to be heard and to brief the issues in connection  
12 with the appropriate procedure, especially in connection with  
13 such a unique set of circumstances as this one, where ensuring  
14 fairness to the 9/11 families, to all of them, not just a very  
15 small minority, is of paramount importance. So that is the --

16 THE COURT: Understood. I don't think it needs to be  
17 said, but obviously I also am interested in fairness. I still  
18 don't understand how you would be, under the law, an interested  
19 party other than speculatively because your clients have no  
20 judgment and some motions have been filed, some motions are  
21 anticipated. Who know when those will actually be addressed.  
22 But the interest that you hold at this point is essentially  
23 speculative until you have a judgment. I understand that you  
24 have an interest generally because your interest is in  
25 providing fairness and equity to all of the 9/11 families, but

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1 I'm not sure as a legal proposition that you have an interest  
2 as the law understands it.

3 MR. TREMONTE: Your Honor, so here is where I think it  
4 is so important to keep the stay in place at least long enough  
5 to brief this and related issues. The potential prejudice to  
6 the overwhelming majority of 9/11 families of having no  
7 opportunity to be heard on precisely this issue would be  
8 overwhelming, and so we think at a minimum the appropriate next  
9 step for the Court to take is to, with the stay remaining in  
10 place, to afford an opportunity to arguably interested parties  
11 to brief that very issue. It's a complicated issue. There is  
12 not a lot of precedent on it, although what precedent there is  
13 clearly affords the Court very broad equitable powers. And we  
14 would argue that this situation is a very strong candidate for  
15 the exercise of those equitable powers because of the interests  
16 at stake and because of the fortuity of the situation we find  
17 ourselves in as a result of a foreign policy decision that  
18 nobody could have really accurately predicted in terms of its  
19 temporal current.

20 So for those reasons, among others, we think really  
21 what is appropriate here is keep the stay in place and let us  
22 brief that very issue in addition to the threshold questions,  
23 which are federal law questions, of the attachability of the  
24 blocked assets.

25 THE COURT: If we were to enter judgment tomorrow on

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1     behalf of your clients as against the Taliban, hypothetically  
2     speaking, so that you had the third judgment that you could  
3     execute against the DAB funds, are you aware of any law that  
4     would allow you to jump over the Doe and Havlish plaintiffs?  
5     Doesn't their priority mean that, no matter what, they get to  
6     go first?

7             MR. TREMONTE: That is a critical threshold question  
8     that is inextricable from the fairness question and, in our  
9     view, from the equities questions. Our position is that all  
10    9/11 families should be on an equal footing. And again --

11            THE COURT: I understand that's your position, but are  
12    you aware of any law? I understand that that's your desire,  
13    your goal, the objective here. But are you aware of any law  
14    that would allow a third-in-line judgment holder to jump  
15    judgment holder one and two?

16            MR. TREMONTE: Certain --

17            THE COURT: My understanding of Second Circuit law,  
18    and I am looking at *CSX Transportation v. Island Rail Terminal*,  
19    I'm not aware of any law that would allow judgment holder  
20    number three, which there is none at this point, but were there  
21    to become one, I'm not aware of any law that would allow that  
22    judgment holder to jump in line in order to get priority. And  
23    so I want to make sure -- I understand the goal and the  
24    objective of fairness and equity, but I want to make sure that  
25    we are acting in a way that is consistent with the law and it

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1 seems to me unfair to the Doe and Havlish judgment holders to  
2 hold up their execution if, under all circumstances of the law,  
3 they are first in line. What is the authority to prejudice  
4 them in your client's interest when they are going to be third  
5 in line or farther in line than Doe and Havlish?

6 MR. TREMONTE: So, your Honor, I think there are  
7 potentially multiple sources of legal authority here that could  
8 potentially come into play, although I want to emphasize again,  
9 in terms of the prejudice analysis, it would be, I think,  
10 inarguably, much more prejudicial to the majority of 9/11  
11 families that if they are in fact interested persons within the  
12 meaning of 5240 and if, moreover, it is an appropriate exercise  
13 of the Court's equitable powers under that provision of the  
14 CPLR to adjust the enforcement mechanisms here, then it is  
15 overwhelmingly prejudicial to them to not even afford them an  
16 opportunity to brief whether or not they qualify under the  
17 statute as such.

18 And then, in addition to that, there are also  
19 potentially issues with, you know, defects or infirmities to  
20 the writs that also would need to be briefed. So I think there  
21 are multiple potential sources of legal authority, beginning  
22 with 5240; and, on top of that, there is the prejudice analysis  
23 which argues very, very strongly in favor of a brief  
24 continuance of the stay to afford the parties an opportunity to  
25 brief the relevant procedures.

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1 THE COURT: Why would you be addressing any --

2 MR. TREMONTE: And there are multiple cases --

3 THE COURT: Why would you be addressing any --

4 MR. TREMONTE: I'm sorry, your Honor.

5 THE COURT: Why would you be addressing any defect of  
6 the writ on this particular mechanism, meaning wouldn't that be  
7 something that you would address once the stay is lifted?

8 MR. TREMONTE: Right. I think if we are briefing the  
9 question of the Court's authority to modify enforcement  
10 procedures to ensure fairness, it would make sense, in our  
11 view, to simultaneously brief issues going to defects in the  
12 infirmities in the writs of execution that would also impact  
13 priority.

14 But, again, to be very, very clear, we are not looking  
15 to jump ahead. We are looking to be on equal footing. And I  
16 think there is legal authority for us to argue that it is  
17 within the Court's power to put in place procedures to  
18 effectuate that under these circumstances.

19 THE COURT: Okay. Any other counsel for one of the  
20 plaintiffs' groups wish to be heard.

21 MS. FLOWERS: Your Honor, this is Jodi Flowers. I  
22 just wanted to offer a citation for you for your question  
23 previously. That would be *Plymouth Ventures Partners II L.P.*  
24 *v. GRT Source, LLC*. It is Court of Appeals of New York,  
25 December 16, 2021. It doesn't have a number yet. N.E.3d 2021

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1 Westlaw number 59268932021. It discusses Section 5240's -- the  
2 Court's power under 5240, and I suggest that it might be a  
3 place for the Court to look, quoting, "where the Court needs to  
4 avoid expense, embarrassment, disadvantage, or other prejudice  
5 to parties or courts," the Court can look at it, inseparable  
6 powers, the precise question that we are talking about.

7 And I have to take issue with the statement by I  
8 believe it was counsel for the Doe plaintiffs that there are  
9 only two interests at issue here. I think we have been clear  
10 that we believe there are more. For Burnett, for example, we  
11 do have default judgments against the Taliban and have had them  
12 since 2006 on behalf of 5,000 plaintiffs, over 5,000  
13 plaintiffs, 5,182 plaintiffs. And these are also people who  
14 have their damages liquidated as against Iran. So like with  
15 other procedures before this Court, it is not a heavy stretch  
16 to say that a joint tortfeasor can be held liable for those  
17 same damages.

18 So I appreciate and sympathize with the amount of  
19 papers that came in as a result of these developments, but a  
20 lot of this work has already been done by this Court, a lot of  
21 hard work on determining the damages; and I believe that if we  
22 had the benefit of a little bit of time, we could address those  
23 fully and come up with a procedure that's not onerous to this  
24 Court and doesn't derail the proceedings.

25 You know, I'm not going to repeat the arguments in our

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1 papers, I would simply just say that we are very concerned that  
2 lifting the stay could create a rush to judgments. I would  
3 like to believe Mr. Wolosky that no MDL party will be  
4 prejudiced, but absent the ability to brief these threshold  
5 issues before we are so off to the races I think will prejudice  
6 at least my plaintiffs.

7 THE COURT: Thank you.

8 Would Mr. Thornton or Mr. Wolosky or Mr. Mitchell wish  
9 to be heard in response?

10 MR. WOLOSKY: It is Lee Wolosky. Just briefly, your  
11 Honor.

12 Again, just to situate us, all we are here today  
13 asking the Court to do is to lift the stay. Obviously no money  
14 is going anywhere. All issues that have been raised on this  
15 conference can and should be briefed.

16 And also, if it gives the Court assurance, you know,  
17 we are happy to continue to meet and confer with the other  
18 parties, as we have been, as we move forward.

19 Thank you, your Honor.

20 THE COURT: Thank you. All right. Does anybody else  
21 wish to be heard?

22 MR THORNTON: Your Honor, John Thornton on behalf of  
23 the Doe plaintiffs.

24 I didn't hear anything that had any foundation in law  
25 for authority that would stop or that, you know, could be used

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1 to prevent just the normal prosecution of our writ. And I also  
2 didn't hear anything that I thought made any practical sense,  
3 and so we would oppose it. We think that it would prejudice  
4 our plaintiffs, our clients' rights, and so we don't see any  
5 reason not to simply allow us to move forward on the writs, as  
6 the government thinks we should, and we don't see any reason to  
7 tie our ability to do that to an unrelated, factually unrelated  
8 group of plaintiffs.

9 Thank you.

10 THE COURT: Thank you. I think that's a good point.  
11 The Doe judgments, I believe, are a little more than \$100  
12 million, and with \$3.5 billion assets that are available, I  
13 think there is a fair question whether or not they should be  
14 treated, at a minimum, on a separate track. And so I would  
15 like everybody to be thinking about whether or not the Doe  
16 plaintiffs, who are not part of the 9/11 case otherwise, only  
17 by virtue of these funds, whether or not there is any objection  
18 to lifting the stay for execution with respect to their  
19 judgment.

20 So here is what I would like. First and foremost, I  
21 will turn back to Ms. Vargas, I would like you to get me a  
22 proposed order so that the executive carry out its foreign  
23 policy objectives as quickly as possible. As I have indicated,  
24 I will give the parties 24 hours from the filing of that  
25 proposed order to file any objections or raise any issues, and



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1 at the 24-hour expiration, assuming there is no reason not to,  
2 I will go ahead and sign that proposed order.

3 So Ms. Vargas, you can also notify your point of  
4 contact at the Department of State that that's going to be the  
5 procedure so that they are starting to get themselves organized  
6 with respect to those assets.

7 MS. VARGAS: Thank you, your Honor.

8 THE COURT: Thank you.

9 With respect to the lifting of the stay, I'm going to  
10 hold off on lifting it today to give the parties an opportunity  
11 to be heard. I am hoping I'm not going to get full-blown  
12 memoranda of law. I think letter briefs should be adequate to  
13 raise the issues, and I will direct that those are filed by  
14 next Monday, which I believe is the 28th of February.

15 I assume the Havlish and Doe parties would like to be  
16 heard in opposition to that. I know that you are interested in  
17 moving this as quickly as possible, so I will assume that you  
18 will get your opposition submissions in soon thereafter, but I  
19 will give you the -- I don't know how long these briefs are  
20 going to be or how much time you will need to oppose them, so  
21 we will defer to the Doe and Havlish plaintiffs. If you can  
22 just let me know when you anticipate filing your objections to  
23 those briefs and then we will take all of that under  
24 advisement.

25 Separately I would like, as Mr. Carter raised, to have

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1 the parties speak about a proposal for the turnover proceedings  
2 if and when the stay is lifted, and so I will ask for a  
3 proposal from the parties on how that should be borne out as  
4 well, and I will direct that that be filed next Wednesday,  
5 which I believe is March 2. I don't have my calendar in front  
6 of me, but I think that's right. Yes. March 2. If you can  
7 file a letter application with the Court with a proposal,  
8 having had a meet-and-confer with both the Doe and Havlish  
9 judgment holders as well as the relevant members of the  
10 plaintiffs' executive committee and any other interested  
11 plaintiffs as to how we would proceed assuming the stay is  
12 lifted, and we will take all of that under advisement.

13 I think that addresses all of the issues that I wanted  
14 to cover today. Anything further from the -- oh, and if I can  
15 ask, as well, with respect to the letter that's filed on March  
16 2, if the parties can specifically address this issue in  
17 connection with the Doe plaintiffs, given that they are not  
18 9/11 plaintiffs and their judgment is relatively small in  
19 connection with the funds available. So I would also like to  
20 hear whether or not there is any objection to allowing that  
21 application to proceed at a quicker pace or on a separate track  
22 so that those plaintiffs who are really just being brought in  
23 to the morass of the MDL can execute their judgment.

24 All right. With that, let me turn to the Havlish and  
25 the Doe judgment holders. Anything further you would like to

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1 discuss today?

2 MR. WOLOSKY: Lee Wolosky. No, your Honor, for  
3 Havlish.

4 MR THORNTON: John Thornton. No, your Honor, for the  
5 Doe plaintiffs.

6 THE COURT: Great. Thank you.

7 Ms. Vargas, anything further from the government?

8 MS. VARGAS: Not at this time, your Honor.

9 THE COURT: Okay. And anything further from any of  
10 the other plaintiffs' counsel who have spoken today?

11 A VOICE: No, your Honor.

12 A VOICE: No, your Honor.

13 A VOICE: No, your Honor.

14 THE COURT: All right. Thank you very much.  
15 Ms. Vargas, I will look out for your proposed order. I hope  
16 everybody remains healthy and safe.

17 We are adjourned. Thank you.

18 COUNSEL: Thank you.

19 oOo